

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5212 OF 1999

WITH

SPECIAL CIVIL APPLICATION NO. 5213 to 5238 of 1999

with

SPECIAL CIVIL APPLICATION No. 4263 to 4271 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT ELECTRICITY BOARD

Versus

DAMJIBHAI KHALPA GAMIT

Appearance:

1. Special Civil Application No. 5212 of 1999
MR MD PANDYA for Petitioner BOARD No. 1-2
MRS SANGEETA N PAHWA for Respondents Workmen
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.M.D.Pandya, learned advocate appearing on behalf of the petitioners - Board and Ms.Sangeeta Pahwa, learned advocate appearing on behalf of the respondents - workmen.

#. In these two group matters, in all 39 workmen are concerned, whose services were terminated by the petitioner Board in the year 1982 - 83. Thereafter, the respondents workmen had approached the Industrial Tribunal, Surat by way of filing complaint under Section 33-A of the Industrial Disputes Act, 1947 in pending Reference No.162 / 1978, wherein the Industrial Tribunal has passed the award on 30th September, 1998 granting reinstatement to each workman with continuity of service and full backwages of the interim period and also directed the petitioner Board to give all consequential benefits. This Court has in these group matters, issued RULE and by way of interim order stayed operation of the backwages only and granted reinstatement to each workman from the date of award and also directed to the petitioner Board to make payment of wages to each workman with effect from date of award in the minimum pay scale. In pursuance of the interim order passed by this Court in group of matters, all the respondents workmen have been reinstated in service by the petitioner Board and they all are working except two workmen who expired during pendency of proceedings before the tribunal.

#. Learned advocate Mr.M.D.Pandya appearing on behalf of the petitioner Board has submitted that before the tribunal, various contentions have been raised by the petitioner Board that Reference No.162 / 1978, wherein the workmen are not the concerned workmen, no Reference was pending when the complaint was filed. The petitioner Board has produced various records showing actual workings of each workman. The contention raised by the petitioner Board is that inspite of these documentary evidence produced by the petitioner Board, while recording oral evidence before the Tribunal, the Tribunal has ignored the same and relied upon oral deposition of each workman and come to the conclusion that each workman has completed 240 days continues service and merely considering non compliance of Section 25-F of the I.D.Act, 1947 granted reinstatement with full backwages of the interim period. The petitioner Board has also raised contention before the tribunal that it is burden of the employee or the workman to prove 240 days actual working days with the petitioner Board but the workmen has not produced any satisfactory evidence before the

tribunal except oral evidence. Learned advocate Mr.M.D.Pandya has also raised contention that calculation of 240 days is required to be taken into account from the date of termination preceding 12 months, even this aspect has been ignored by the tribunal. Therefore, according to my opinion, the tribunal has committed gross error in granting relief in favour of each workman.

#. Learned advocate Ms.Sangeeta Pahwa appearing for respondents workmen has submitted that the tribunal has rightly appreciated the oral evidence and documentary evidence produced and led before the tribunal and passed just and proper order in favour of the respondent workmen. She has further submitted that at the time when the termination order passed against each workman in the year 1982-83, at that time, Reference was pending before the Industrial Tribunal and therefore, the cause of action was already arose before the tribunal when the concerned Reference was pending before the Tribunal. Therefore, complaint under Section 33-A of the I.D.Act was maintainable. It is also submitted that before the tribunal, each workman has satisfactorily proved working of 240 days and thereafter, the tribunal has rightly appreciated and passed the order in favour of the respondent workmen. She has also submitted that each workman has been reinstated in service in pursuance of the award and the interim order passed by this Court and they are working with the petitioner Board. It is also submitted that the petitioner Board has not produced complete Pay Registers, Muster Roll in respect of entire period but the petitioner Board has only produced two documents for limited period and therefore, submission is, the tribunal has not committed any error while passing such award.

#. However, it is pertinent to note that when these group of petitions are taken up for final hearing, learned advocate Ms.Sangeeta Pahwa appearing for respondents workmen has fairly submitted that if the case of each workman, whose services came to be terminated in the year 1982-83, but now who are working from the date of award as per the interim order passed by this Court, is considered for regularisation of their service, in such circumstances, the respondents workmen are ready and willing to forego claim of backwages of the interim period awarded by the tribunal. However, Ms.Pahwa, learned advocate further submits that while considering abovestated aspect for not claiming the backwages of the interim period, this Court can consider the case of the respondents workmen for reinstatement with continuity of service from the date of joining in the petitioner Board.

#. However, learned advocate Mr.M.D.Pandya for petitioner Board has submitted that at present all the respondents workmen are reinstated in service in pursuance of the order passed by this Court but considering the contentions raised by the petitioner Board, question arises as to validity of the award in question.

#. I have considered submissions of the learned advocates for the parties. Prima facie, after perusal of the award, certain observations made by the Tribunal while considering the documentary evidence which can be said to be misconception of law on the part of the tribunal. But considering the fact that services of the respondents workmen came to be terminated in the year 1982-83 but presently, pursuant to the interim order passed by this Court, all the workmen have been reinstated in service by the petitioner Board from the date of award and they are working and as such, there is nothing adverse pointed out against the respondent workmen who are working with the petitioner Board. Therefore, in light of above facts, in view of this Court, in such situation, it is not desirable to remand the matters back to the Industrial Tribunal for fresh adjudication. But considering the fact that services of each respondent workman terminated in the year 1982-83 and thereafter, decision given by the tribunal in the year 1996, 1998 and 2000 respectively and presently the respondents workmen have been reinstated in service by the petitioner Board in pursuance of the interim order, according to my opinion, it would not be desirable to remand the matter back to the Industrial Tribunal for fresh adjudication. However, considering the fact that the respondents workmen are ready to forego the claim backwages of the interim period as awarded by the Industrial Tribunal, in such situation, if the petitioner Board will consider the case of each workman for regularisation in service on the basis of the Establishment Circular No.446, can meet the ends of justice. Learned advocate Mr.M.D.Pandya for petitioner Board has submitted that the petitioner Board has already cancelled the Establishment Circular No.446 dated 14th February, 1985 even though the petitioner Board will consider the case of each workman in light of provisions made in the Establishment Circular No.446 dated 14th February, 1985 and the petitioner Board will consider the actual workings of 960 days keeping in mind the earlier days of working prior to termination and subsequent working days from the date of award of the respondents workmen for giving benefits under Establishment Circular

No.46 dated 14th February, 1985. However, learned advocate Mr.M.D.Pandya for petitioner Board has made it clear that counting of actual working prior to termination which based upon the documents which produced or documents which are in possession of the Board and the petitioner Board will calculate accordingly as per the records available with the petitioner Board. It is also noted that Mr.M.D.Pandya, learned advocate for petitioner Board and Ms.Sangeeta Pahwa, learned advocate for respondents workmen have not disputed the fact that after reinstatement of each workman in pursuance of the interim order passed by this Court, there is no break in service and they are performing continuous working with the petitioner Board. Therefore, considering submissions made by the learned advocate Mr.M.D.Pandya for petitioner Board that the petitioner Board will calculate 960 working days while keeping in mind the earlier working days prior to termination as per the record of the Board and subsequent working days from the date of reinstatement of each workman with the petitioner board and on completion of 960 days accordingly, the petitioner Board will give benefit of regular scale and all services benefits to the respondent workman. However, it is also made clear before this Court by the petitioner Board that such benefits will be given to each workman by the petitioner Board but if the post/s in question is not found to be vacant, then also, necessary posts will be created supernumary and accordingly, all the benefits of regular scale and other service benefits will be given to each workman by the petitioner Board.

#. I have considered submissions of the learned advocates for the parties. According to my opinion, stand taken by the respective parties before this Court, is fair and seems to be interest of both the parties. This Court would certainly appreciate that very reasonable and proper stand is taken by both the parties to resolve the disputes concerning 39 workmen whose services came to be terminated in the year 1982-83. However, it is made clear that considering the stand taken by both the parties and the submissions made by the learned advocate Mr.Pandya for calculating 960 days as per the Establishment Circular No.446 dated 14th February, 1985 earlier days of actual working as per the record of the Board and subsequent working from the date of reinstatement, the respondents workmen will not get any seniority or other privilege upon the persons those who are already regularised. Considering all these aspects and looking to the peculiar facts and circumstances of the case, according to my opinion, award in question involved in all these group matters require

to be modified accordingly.

#. Accordingly, the directions issued by the Tribunal granting reinstatement with continuity of service in favour of each workman will remain intact and not disturb by this Court. However, directions issued by the Tribunal granting full backwages of the interim period in favour of the workmen concerned is hereby quashed and set aside. It is directed to the petitioner Board to give benefits to each respondent workman as per the Establishment Circular No.446 dated 14th February, 1985 after considering actual working days prior to termination as per the record produced by the petitioner Board as available with the petitioner Board and subsequent working days from the date of reinstatement as per the interim order passed by this Court and upon completion of 960 days by workman concerned, the petitioner Board will give benefit of regular pay scale and other all service benefits to each workman from the date the workman become entitled as per Establishment Circular No.446 dated 14th February, 1985. In the event of non availability of vacant post/s in question, the petitioner Board is directed to create such supernumerary post/s in question for appropriate numbers for all concerned workmen and give them the benefit of regular pay scale and other service benefits accordingly. However, it is clarified that while granting benefits of regular pay scale in the post in question and other service benefits, whatever wages paid to the workmen concerned after reinstating will have to be adjusted by the petitioner Board accordingly and upon grant of such benefit of regular pay scale, any arrears, if requires to be paid by the petitioner Board, same will have to be paid by the petitioner Board to the workmen concerned within period of three months from the date of receiving the copy of this order. It is further directed to the petitioner Board to consider reinstatement with continuity of service for calculating qualifying service of the workman to get retiral benefits from the petitioner Board.

##. Considering apprehension of the Learned advocate Mr.M.D.Pandya for petitioner Board, this Court observe that this order has been passed taking into account the peculiar facts and circumstances of the case and therefore, this order may not be cited against the petitioner Board as precedent in any other similar case/s which are pending before any authority or court of law. However, it is also made clear that finding given by the tribunal in award in question in group of matters, may not be taken to be as basis for considering other matters

before any other Courts and such matters are required to be decided independently without being influenced by the award in question involved in these group of matters. The order passed by this Court is required to be implemented by the petitioner Board within period of three months from the date of receiving a copy of this order.

All these group of petitions stand partly allowed. Rule in each petition is made absolute to the extent accordingly. Interim relief, if any, stands vacated in each petition. No order as to costs. Direct Service is permitted to parties.

Date : 9-5-2002 [H.K.Rathod, J.]

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